

The Single Economic Entity Doctrine in EU Competition Law

Focused on applying single economic entity doctrine in relation to merger control of State Owned Enterprises

Abstract

This thesis focuses on the issues surrounding single economic entity doctrine in relation to State Owned Enterprises (SOEs), in particular on the effects of *Article 22 of the Preamble of Council Regulation (EC) No 139/2004 of 20 January 2004 on the control of concentrations between undertakings (EUMR)*, and the *Commission Consolidated Jurisdictional Notice under Council Regulation (EC) No 139/2004 on the control of concentrations between undertakings*. Together these documents set the standards for merger control practice concerning SOEs. They are centred around the principle of applying the single economic entity doctrine when identifying the turnover of SOEs and when determining the jurisdiction of the Commission. The thesis possesses two major goals. The primary goal of the thesis is to elucidate the criteria used for the determination of a single economic unit (single economic entity) with independent decision-making power in the public sector. To this end, in chapter 3, the author has synthesized a list of the relevant criteria used for the determination of an economic entity, based on the criteria used by the Commission that have emerged over the course of its long-term decision-making practice. In chapter 4, the author examines whether there is any discrimination against SOEs owned by third countries. This chapter is based on an analysis of decisions concerning Chinese and Russian SOEs and a comparison of the criteria used for single-entity determination in these cases with the criteria employed in the decisions concerning EEA SOEs, as listed in chapter 3. The author concludes that he did not find any indication of discriminatory criteria being imposed on the examined third-country SOEs. Chapter 5 provides a closer analysis of Chinese SOEs, as the assessment of their independence arises as one of the most striking challenges of recent European merger control practice. The author compares his findings on the governance of Chinese SOEs with criteria for the determination of independence and suggests that as a result of coordination via The Communist Party of China, Chinese SOEs might be part of one broad economic entity.

The secondary goal of the thesis is to predict the possible impact of an SOE being considered a part of a broader economic entity under the EUMR regime on the application of the other branches of EU competition law on the SOE in question. The author examines, in particular, the (non)applicability of Art 101 TFEU on internal interactions between SOEs constituting a single economic entity. It can be concluded that in such cases Art 101 TFEU is in principle non-applicable. The author also examines the accountability of parent entities for EU competition law breaches perpetrated by their subsidiaries. It can be concluded that attributing liability to parent entities is possible even in cases when the parent entity

is a public body of a third state (such as Chinese SASAC), provided it forms a single economic entity with the subsidiary which has breached EU competition law rules. The author finds the single economic entity doctrine to be a suitable instrument for the analysis of market structure. Therefore, the approach towards the single entity doctrine in the public sector should not be modified and should remain as it is. The author suggests that emerging fears in relation to the increasing influence of several third countries would preferably be tackled by protective measures from distinct areas of EU law, as this approach would not impede the effectiveness of the single economic entity doctrine as a market structure indicator.